

**United States Department of Labor
Employees' Compensation Appeals Board**

R.B., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
IMMIGRATION & CUSTOMS
ENFORCEMENT, Glynco, GA, Employer**

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**Docket No. 16-1696
Issued: September 7, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 23, 2016 appellant filed a timely appeal from a June 29, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury in the performance of duty, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence after OWCP rendered its June 29, 2016 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

FACTUAL HISTORY

On August 11, 2015 appellant, then a 37-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that he sustained sharp pain in his back and radiculopathy at work at 10:30 a.m. on August 7, 2015.³ Regarding the cause of the claimed injury, he noted, “Physical conditioning warmup [sic]. Left class feeling fine then felt lower back tighten up later in the afternoon. I aggravated the injury two days later lifting weights.” Appellant did not stop work.

Appellant submitted an August 11, 2015 memorandum in which Dr. Raymond Topp, an attending Board-certified orthopedic surgeon, provided the diagnosis of lumbar radiculopathy and indicated that a magnetic resonance imaging (MRI) scan had been ordered. He also submitted an August 11, 2015 memorandum with an illegible signature which contained a recommendation of “no physical activity” but it is unclear whether this document was completed by a physician.

In the attending physician’s report portion of an Authorization for Examination And/Or Treatment form (Form CA-16)⁴ completed on August 11, 2015, Dr. Topp indicated that the history of the employment injury provided by appellant was that it occurred “during exercises at work on August 9, 2015.” In the findings section of the form, he indicated “no fracture” but he did not provide any diagnosis. Dr. Topp checked a box marked “Yes” indicating that the “condition(s) found was caused or aggravated by the employment activity described.” He indicated that appellant could engage in regular work.

In a letter dated August 26, 2015, OWCP requested that appellant submit additional factual and medical evidence in support of his claim.⁵

The findings of August 11, 2015 diagnostic testing revealed left-sided L3-4 intraforaminal disc protrusion with mass effect and displacement of the exiting L3 nerve root.”

In an August 11, 2015 report received on September 24, 2015, Dr. Topp indicated that appellant presented to him for the first time on that date complaining of pain “after an injury on [August 9, 2015] during exercise” noting that he “bent over while sitting to pick up a dumbbell and felt a pop in his back.”⁶ He noted that appellant further reported that the pain started later that day and that he denied any “radiating pain.” In the review of systems portion of the report,

³ Appellant indicated that the injury occurred in a matroom at an address in Brunswick, GA.

⁴ The Board notes that where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee’s claim for an employment-related injury, the Form CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c). The record is silent as to whether OWCP paid for the cost of appellant’s examination or treatment for the period noted on the form.

⁵ The record reveals that the August 26, 2015 development letter was returned to OWCP marked “return to sender.” Appellant later provided an updated address.

⁶ Dr. Topp indicated that appellant was seen by another physician in an emergency room on August 10, 2015.

Dr. Topp indicated under the musculoskeletal section that appellant had “joint pain and/or swelling.” He reported the findings of his physical examination noting that appellant’s range of back motion was limited due to pain, that there was 5/5 motor strength of all muscle groups of the lower extremities, and that straight leg raising test was normal. Dr. Topp found that the findings of MRI scan testing of appellant’s back revealed an L3-4 annular tear with no herniation of the disc. He diagnosed lumbar radiculopathy, low back pain, and “degenerative disc disease [not otherwise specified] -- annular tear.” Dr. Topp indicated that appellant could return to his full-duty work.

In a decision dated October 7, 2015, OWCP determined that appellant had not met his burden of proof to establish a traumatic injury in the performance of duty. Appellant had not established fact of injury. OWCP noted:

“Specifically your case is denied because the evidence is not sufficient to establish that the event(s) occurred as you described. The reason for this finding is that you have not responded to the development letter sent to you.... You have stated on your [Form CA-1] the injury occurred on August 7, 2015 during a warmup (actual cause unclear) and that you aggravated it two days later lifting weights. The medical evidence notes that the injury was August 9, 2015 and occurred while lifting weights. There is no statement in the file to explain this discrepancy nor is there a clear explanation of what occurred on August 9, 2015.”

Appellant requested reconsideration on May 22, 2016 and submitted an undated statement in support of his reconsideration request. In this statement, he indicated that, in early-August 2015, he was attending special agent training at the Federal Law Enforcement Training Center (FLETC) in Brunswick, GA, as part of his work for the employing establishment. Appellant indicated that at approximately 9:40 a.m. on August 7, 2015 he was participating in a warm-up session as part of his training. He noted:

“The warmup [sic] consisted of some running, stretching, and body weight exercises. We were required to wear a duty belt equipped with various law enforcement tools, which significantly added to the weight of the belt. We were in a pushup position for an extended period of time, and that’s when I began to feel some discomfort in my lower back. The discomfort was moderate for the remainder of the day, and through the weekend.

“On August 9, 2015, at approximately 9 a.m., I lifting weights at the track and field on the campus and aggravated the injury when I attempted to lift a barbell. The effects of the injury were more drastic and I immediately stopped exercising. The pain continued and over the counter pain medication wouldn’t help.... Please keep in mind that physical fitness participating during the training day is a requirement. Individually, we were also required to certify that we [sic] a minimum of three hours per week on our own time that must include cardiovascular and weight training and or body weight exercises.”

Appellant submitted a document which appears to constitute a schedule of special agent training classes for the period August 3 through 7, 2015 at the Immigration and Customs

Enforcement Academy.⁷ The documents list a handcuffing class as taking place between 9:30 a.m. and 11:30 a.m. on August 9, 2015. Appellant also submitted two pages from the Immigration and Customs Enforcement Special Agent Training Handbook which pertain to the physical training requirements for special agents.

Appellant submitted a different version of the August 11, 2015 report of Dr. Topp originally received on September 24, 2015. This new version contained substantially the same text as the earlier submitted report.

In a letter dated May 25, 2016, OWCP requested that appellant submit additional factual and medical evidence in support of his claim. It noted that it sent this letter because the previous development letter dated August 26, 2015 had been returned marked “return to sender.” Appellant submitted additional copies of previously submitted documents.

By decision dated June 29, 2016, OWCP determined that appellant did not meet his burden of proof to establish a traumatic injury in the performance of duty. It indicated that it was modifying its October 7, 2015 decision to reflect that the “evidence is sufficient to modify the decision dated October 7, 2015 from a denial based on one of the five basic elements for FECA coverage to a denial based on another basic element.” OWCP further noted that appellant had not submitted rationalized medical evidence establishing that he sustained a traumatic injury in the performance of duty.⁸

LEGAL PRECEDENT

An employee seeking benefits under FECA⁹ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed, are causally related to the employment injury.¹⁰ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹¹

⁷ It appears that the Immigration and Customs Enforcement Academy is part of FLETC in Brunswick, GA.

⁸ OWCP indicated that appellant’s traumatic injury claim was denied “because the medical evidence you provided, specifically the August 11, 2015 report from Dr. Topp, does not contain his medical opinion as to what caused the conditions he diagnosed.” It noted that “Dr. Topp references the August 9, 2015 weight lifting incident but does not mention what occurred on August 7, 2015.”

⁹ *Supra* note 1.

¹⁰ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.¹² Second, the employee must submit medical evidence, to establish that the employment incident caused a personal injury.¹³

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁴

ANALYSIS

The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish that he sustained a traumatic injury in the performance of duty.

On August 11, 2015 appellant filed a Form CA-1 claiming that he sustained sharp pain in his back and radiculopathy at work on August 7, 2015. Regarding the cause of the claimed injury, appellant noted, "Physical conditioning warmup [sic]. Left class feeling fine then felt lower back tighten up later in the afternoon. I aggravated the injury two days later lifting weights." Appellant later indicated that, in early-August 2015, he was attending special agent training at FLETC in Brunswick, GA, as part of his work for the employing establishment. He indicated that at approximately 9:40 a.m. on August 7, 2015 he was participating in a warm-up session as part of his training and that the warmup consisted of some running, stretching, and body weight exercises. Appellant reported that he was in a pushup position for an extended period of time, and that is when he began to feel some discomfort in his lower back. He further indicated that on August 9, 2015, at approximately 9:00 a.m., he was lifting weights at the track and field on the campus and aggravated his August 7, 2015 injury when he attempted to lift a barbell.¹⁵

In decisions dated October 7, 2015 and June 29, 2016, OWCP denied appellant's claim for a traumatic injury. The Board finds, however, that the basis for OWCP's denial of appellant's claim is unclear.

¹² *Julie B. Hawkins*, 38 ECAB 393 (1987).

¹³ *John J. Carlone*, 41 ECAB 354 (1989).

¹⁴ *See I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹⁵ Appellant noted, "Please keep in mind that physical fitness participating during the training day is a requirement. Individually, we were also required to certify that we a minimum of three hours per week on our own time that must include cardiovascular and weight training and or body weight exercises."

In its October 7, 2015 decision, OWCP determined that appellant has failed to meet his burden of proof to establish a traumatic injury in the performance of duty. It found that the traumatic injury claim was denied because appellant had not established fact of injury and noted, “Specifically your case is denied because the evidence is not sufficient to establish that the event(s) occurred as you described.” In its June 29, 2016 decision, OWCP appears to deny appellant’s claim on a different basis, but the precise nature of its finding is unclear. In this decision, it indicated that it was modifying its October 7, 2015 decision to reflect that the “evidence is sufficient to modify the decision dated October 7, 2015 from a denial based on one of the five basic elements for FECA coverage to a denial based on another basic element.” OWCP further noted that appellant had not submitted rationalized medical evidence establishing that he sustained a traumatic injury in the performance of duty.

As noted, appellant has implicated specific activities on August 7 and 9, 2015 as contributing to his claimed condition. While the fact that OWCP evaluated the medical evidence in its June 29, 2016 decision suggests that it accepted some aspect of appellant’s factual claim, the precise nature of what has been accepted remains unclear. It remains unclear whether OWCP has accepted only an August 7, 2015 work incident, whether it has accepted only an August 9, 2015 work incident, or whether it has accepted work incidents on both dates.

In deciding matters pertaining to a given claimant’s entitlement to compensation benefits, OWCP is required by statute and regulation to make findings of fact.¹⁶ OWCP procedure further specifies that a final decision of OWCP “should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence necessary to overcome the defect of the claim.”¹⁷ These requirements are supported by Board precedent.¹⁸

For these reasons, the case shall be remanded to OWCP for further development to include the production of a decision that contains adequate findings of facts and sufficient explanation of its conclusions. After such development it deems necessary, OWCP shall issue a *de novo* decision regarding appellant’s claim for a work-related traumatic injury.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant met his burden of proof to establish that he sustained a traumatic injury in the performance of duty, as alleged.

¹⁶ 5 U.S.C. § 8124(a) provides that OWCP “shall determine and make a finding of facts and make an award for or against payment of compensation.” 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP “shall contain findings of fact and a statement of reasons.”

¹⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5c(3)(e) (February 2013).

¹⁸ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 7, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board